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7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION  
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11 RODOLFO ARTIGA, an individual,

12 Plaintiff,

13 v.

14 SAMUEL A. FRYER YAVNEH  
ACADEMY, a California Nonprofit  
15 Public Benefit Corporation; and  
DOES 1 through 20, inclusive,

16 Defendants.  
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Case No:

*[Removed from Los Angeles County  
Superior Court, Case No. 22STCV28736]*

**DEFENDANT SAMUEL A. FRYER  
YAVNEH ACADEMY'S NOTICE  
AND PETITION FOR REMOVAL OF  
ACTION PURSUANT TO U.S.C.  
§§ 1331, 1441, AND 1446**

*[Filed concurrently with Certificate of  
Interested Parties, Civil Cover Sheet,  
Corporate Disclosure, Notice of Related  
Cases, and Declaration of Evan E. Kroll]*

Complaint Filed: September 1, 2022  
Trial Date: None

1           **TO THE HONORABLE COURT, THE CLERK OF THE UNITED**  
 2           **STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF**  
 3           **CALIFORNIA, WESTERN DIVISION, AND PLAINTIFF RODOLFO**  
 4           **ARTIGA AND HIS COUNSEL OF RECORD:**

5           PLEASE TAKE NOTICE that Defendant, SAMUEL A. FRYER YAVNEH  
 6           ACADEMY (“Defendant”), through its counsel of record, submits this petition for  
 7           removal of the action by Plaintiff RODOLFO ARTIGA (“Plaintiff”) from the  
 8           Superior Court of the State of California, County of Los Angeles, to the United  
 9           States District Court for the Central District of California pursuant to 28 U.S.C.  
 10          sections 1331, 1441, and 1446. The grounds for removal are as follows:

11          **I.     STATEMENT OF JURISDICTION**

12          1.     This Court has original jurisdiction over this action because of the  
 13          existence of a federal question. Specifically, Plaintiff has asserted a claim and seeks  
 14          remedies under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634.  
 15          (See 28 U.S.C. §§ 1331, 1441(a) and (c).)

16          **II.    VENUE**

17          2.     This action was filed in the Superior Court of California for the  
 18          County of Los Angeles. Thus, venue properly lies in the United States District  
 19          Court for the Central District of California. (See 28 U.S.C. §§ 84(c), 1391, and  
 20          1441(a).)

21          **III.   PLAINTIFF’S COMPLAINT**

22          3.     This lawsuit arises out of Plaintiff’s employment with Defendant. On  
 23          September 1, 2022, Plaintiff RODOLFO ARTIGA (“Plaintiff”) filed a Complaint  
 24          in the Superior Court of California, County of Los Angeles, which was assigned  
 25          Case No. 22STCV28736 (“Complaint”). In the Complaint, Plaintiff alleges six  
 26          causes of action for: (1) Wrongful Termination in Violation of Public Policy; (2)  
 27          Failure to Provide Rest Periods; (3) Failure to Provide Accurate, Itemized Wage  
 28          Statements; (4) Failure to Permit Inspection of Personnel and Payroll Records; (5)

Age Discrimination Under the Age Discrimination in Employment Act (“ADEA”); and (6) Unfair Competition. (Declaration of Evan E. Kroll (hereinafter “Kroll Decl.”) at ¶ 2.)

4. On November 2, 2022, Defendant served via substituted service with the Summons, Complaint, Civil Case Cover Sheet, Notice of Case Assignment, Alternative Dispute Resolution Packet, Voluntary Efficient Litigation Stipulation Packet, First Amended General Order Re: Mandatory Electronic Filing, Notice of Case Management Conference, Local Rules Reminder to Attorneys, and Statement of Damages. (Kroll Decl., at ¶ 3, **Exhibit “A”**.)

5. On November 3, 2022, Plaintiff filed a proof of service by substituted service. (Kroll Decl., at ¶ 4, **Exhibit “B”**)

6. On November 29, 2022, Defendant filed its Answer and Affirmative Defenses to Plaintiff’s Complaint. (Kroll Decl., at ¶ 5, **Exhibit “C”**.)

7. As of the date of this Removal, no other pleadings have been served on Defendant in this action. (Kroll Decl., at ¶ 6.)

8. Based on the foregoing, Defendant is informed and believes that the documents provided in Exhibits “A,” “B,” and “C” attached to the Declaration of Evan E. Kroll, filed concurrently herewith, constitutes the entire state court file in this matter.

#### **IV. TIMELINESS OF REMOVAL**

9. This Notice of Removal has been filed within thirty (30) days of service of Defendant and therefore the requirement of 28 U.S.C. § 1446(b) requiring removal within 30 days of service of the Defendant has been satisfied. In addition, this Notice of Removal has been filed within one year of commencement of the action in state court as required by 28 U.S.C. § 1446(b). Therefore, this Notice of Removal has been timely filed.

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**V. FEDERAL QUESTION JURISDICTION**

10. This action is a civil action which this Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court pursuant to the provisions of 28 U.S.C. 1441(a) because Plaintiff has alleged a violation of the Age Discrimination in Employment Act (“ADEA”). Specifically, in Plaintiff’s Fifth Cause of Action for “Age Discrimination Under the Age Discrimination in Employment Act”, he alleges that the “ADEA requires Defendants to refrain from discriminating against an employee on the basis of basis of age. Plaintiff was a member of the protected class as a result of Plaintiff’s age.” (*sic.*) (*See* Complaint at ¶¶ 39-40.) Plaintiff further alleges that his “age were motivating reasons and/or factors in the decision to subject Plaintiff to the aforementioned adverse employment actions,” (*sic.*) and that “[s]aid conduct violates the ADEA, and such violations were a proximate cause in Plaintiff’s damage.” (*See* Complaint at ¶¶ 43-44.) Accordingly, from the face of the Complaint it is explicit that Plaintiff is asserting that Defendant violated a federal law (the ADEA). Plaintiff seeks compensatory damages, punitive damages, and attorneys’ fees and costs, amongst other things, for Defendant’s alleged violations of the ADEA. (*See* Complaint at ¶¶ 44, 46-47.)

11. Pursuant to 29 U.S.C. § 626(c)(1) and 28 U.S.C. § 1331 the federal court has jurisdiction for a claim for a violation of ADEA brought by a person against a private employer. Therefore, removal is proper here.

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**VI. NOTICE TO THE COURT AND PARTIES**

12. Promptly upon filing of this Notice of Removal in the United States District Court for the Central District of California, written notice of such filing will promptly be served upon Plaintiff's counsel of record and a copy of the Notice of Removal will be filed with the Clerk of the Court for the Superior Court of the County of Los Angeles, California.

Dated: December 1, 2022

Respectfully submitted,

FISHER & PHILLIPS LLP

*/s/Evan E. Kroll*

By:

Brendan Y. Joy  
Evan E. Kroll  
Attorneys for Defendant  
SAMUEL A. FRYER YAVNEH  
ACADEMY

**CERTIFICATE OF SERVICE**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with the law offices of Fisher & Phillips LLP and my business address is 444 South Flower Street, Suite 1500, Los Angeles, California 90071.

On December 1, 2022, I served the foregoing document entitled **DEFENDANT SAMUEL A. FRYER YAVNEH ACADEMY'S NOTICE AND PETITION FOR REMOVAL OF ACTION PURSUANT TO U.S.C. §§ 1331, 1441, AND 1446** on all the appearing and/or interested parties in this action by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

Daniel Azizi, Esq.  
Liliuokalani Martin, Esq.  
Zekiah N. Wright, Esq.  
**DOWNTOWN LA LAW GROUP,  
LLP**  
601 North Vermont Avenue  
Los Angeles, CA 90004

Attorneys for Plaintiff, RODOLFO  
ARTIGA

Tel: (213) 389-3765  
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Email: [zekiah@downtownlalaw.com](mailto:zekiah@downtownlalaw.com)

☒ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☐ **[by FEDERAL EXPRESS]** - I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.

☐ **[by PERSONAL SERVICE]** - I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s). Such messenger is over the age of eighteen years and not a party to the within action and employed with Attorney Service Name and Address .

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed December 1, 2022, at Los Angeles, California.

Karla Gonzalez

Print Name

By: 

Signature